

VI. LENDER TOOLS, TIPS & FAQs

This section contains tools and tips to further assist lenders in enrolling loans, submitting claims and provides answers to most frequently asked questions. For the most recent versions, refer to the CalCAP SB website:

☞ CalCAP SB Homepage: <http://www.treasurer.ca.gov/cpcfca/calcap/sb/index.asp>

☞ FAQs: <http://www.treasurer.ca.gov/cpcfca/calcap/sb/faq.asp>

A. Lender Tools & Tips

1. Examples of Eligible and Non-Eligible Small Business Types

Most common small business types are eligible for participation in the CalCAP program with CalCAP matching up to 100 percent of the combined lender and borrower premium. However, certain businesses and activities are precluded from enrolling in the program as shown in the table below.



This table provides examples only and is not intended for nor should be considered as a comprehensive, all inclusive listing of eligible or non-eligible small business types.

☞ Refer to Chapter VIII for the full text of CalCAP Regulations and contact CalCAP directly if you are unsure about the eligibility of a specific business type.

Type of Business	Federal Funds Lender & Borrower Premium Match	State Funds Lender <u>Only</u> Premium Match
Airplane or Aircraft	eligible	eligible
Charitable, non-profit or eleemosynary institutions	eligible	eligible
Consumer and Marketing Cooperatives	eligible	eligible
Golf Course or Country Club	eligible*	eligible*
Government-owned Corporations	eligible	eligible
Health Club Facilities	eligible	eligible
Racquet Sports Facilities (including handball and racquetball)	eligible	eligible
Skating Facilities (including roller skating, skateboarding, and ice skating)	eligible	eligible
Spas that provide Massage Services	eligible	eligible
Suntan Facilities	eligible	eligible
Tennis clubs	eligible	eligible
Business that earns more than half of its annual net revenue from lending activities (unless a non-bank)	not eligible	eligible

Type of Business	Federal Funds Lender & Borrower Premium Match	State Funds Lender <i>Only</i> Premium Match
Pyramid Sales Plans	not eligible	eligible**
Store whose principal business is the sale of alcoholic beverages for consumption off premises	eligible	not eligible
Adult Entertainment (including strip clubs, adult bookstores, and business whose principal business is the sale of pornography)	not eligible	not eligible
Bars	not eligible	not eligible
Business engaged in speculative activities that develop profits from fluctuations in price rather than through the normal course of trade	not eligible	not eligible
Escort Service	not eligible	not eligible
Facility Primarily Used for Gambling or to Facilitate Gambling	not eligible	not eligible
Firms engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted	not eligible	not eligible
Gun Club, Shooting Range or Gallery	not eligible	not eligible
Hot Tub Facility	not eligible	not eligible
Massage Parlor	not eligible	not eligible
Nudist Camp	not eligible	not eligible
Racetrack	not eligible	not eligible
Store or facility whose principal business is the manufacture or sale of tobacco or tobacco products	not eligible	not eligible
Store or facility whose principal business is the sale of firearms	not eligible	not eligible

Note: *If a legitimate small business

**If lawful multi-level sales organization

2. Examples of Loans Eligible or Prohibited for Enrollment with CalCAP

While majority of business types are eligible for enrollment in the CalCAP SB program, certain restrictions apply to the use of loan proceeds and premium match contributions if the loan is guaranteed by CalCAP as shown in the following table.

Loan Purpose	Federal Lender & Borrower Premium Match	State Lender <u>Only</u> Premium Match
Refinance other financial institution debt provided original loan was for an eligible purpose	eligible	eligible
Refinance CalCAP or other loan (enrolling advance only)	eligible	eligible
Fund any unguaranteed portion of an SBA loan	not eligible	eligible
Purchase any portion of the ownership interest of any owner of the business or acquisition of business	not eligible	eligible
Reimburse funds owned to any owner, including any equity injection or injection of capital for the business' continuance	not eligible	eligible
Repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant tax authority	not eligible	eligible
Repay taxes held in trust or escrow	not eligible	eligible
Loan has been made in order to place under the protection of CalCAP prior debt that is not covered under CalCAP and that is or was owed by the Borrower to the Participating Financial Institution or to an affiliate of the Participating Financial Institution (delinquency cannot be refinanced)	not eligible	not eligible
Passive real estate	not eligible	not eligible
Construction or purchase of residential housing	not eligible	not eligible
Refinance own financial institution debt	not eligible	not eligible
Financing a non-business purpose	not eligible	not eligible

3. How to Report the Number of Employees of a Small Business Concern & Related Affiliates

To report the number of employees of a borrower, the lender will request that the borrower count all individuals employed on a full-time, part-time, or other basis. If a borrower owns multiple businesses, has acquired an affiliate, or been acquired as an affiliate, the employees counted to determine size status include the employees of all affiliates. Employees obtained from a temporary employee agency, professional employment organization, or leasing concern that received payment directly from the borrower will be included.

The borrower should consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, to determine whether individuals are

employees of their business. In general, an individual is considered an employee of a borrower if their compensation is issued by the borrower.



Volunteers (e.g. individuals who receive no compensation, including no in-kind compensation, for work performed) are **not** considered employees.

4. **How to Calculate Full Time Equivalency**

The number of an employer's Full Time Equivalents (FTEs) is determined by dividing the total hours for which the borrower pays wages to all employees during the year by the number of employee work hours per year. The standard calculation for employee work hours per year is 2080: calculated by multiplying 52 weeks by 40 hours per week.

Example:

In a single year a borrower pays 5 employees wages for 2,080 hours each, 3 employees wages for 1,040 hours each, and 1 employee wages for 2,300 hours. The borrower's FTEs would be calculated as follows:

1. Total hours not exceeding 2,080 per employee is the sum of:
 - a. 10,400 hours for the 5 employees paid for 2,080 hours each (5 x 2,080)
 - b. 3,120 hours for the 3 employees paid for 1,040 hours each (3 x 1,040)
 - c. 2,080 hours for the 1 employee paid for 2,300 hours (lesser of 2,300 and 2,080)

☞ These add up to 15,600 hours
2. FTEs: **8** (15,600 divided by 2,080 = 7.5, rounded to the nearest whole number)



FTEs must not exceed 500 for CalCAP SB loans.

B. Frequently Asked Questions (FAQs)

For the most current FAQs, refer to the CalCAP website at:
<http://www.treasurer.ca.gov/cpcfca/calcap/sb/faq.asp>

Eligibility Questions

1. Are business start-ups eligible?
2. Are non-profit organization businesses eligible?
3. Is refinancing eligible?
4. Is a loan for the financing of a real estate investment eligible?
5. Is a loan for the financing of commercial real estate eligible?

Loan Enrollment Questions

1. When do I enroll a loan in CalCAP?
2. Can I “pre-qualify” a loan enrollment with CalCAP before making the loan?
3. Must I enroll the entire loan amount with CalCAP?
4. Can I enroll a CalCAP loan with a borrower who is also receiving an SBA loan?
5. When do I notify CalCAP if I have extended or renewed a CalCAP enrolled loan?

Loan Loss Reserve Questions

1. Where is the loan loss reserve maintained?
2. How much of a CalCAP loan premium must I charge the borrower?
3. Is there a way for a lender not to pay the CalCAP loan premium?
4. How much does CalCAP contribute to the lender’s loss reserve account?

Claim Reimbursement Questions

1. When should I file a claim for reimbursement on a CalCAP loan?
2. Can I defer a claim?
3. What if I recover funds after a claim has been paid?
4. What if I don’t have enough in my loss reserve account to pay a claim?

Eligibility Questions & Answers

1. Are business start-ups eligible?

YES. CalCAP loans can assist start-up businesses. All qualified businesses must satisfy all the requirements of a “Qualified Business” and a “Small Business Concern” defined in California Code of Regulations (CCR), Title 4, Section 8070 (r) and (v).¹

2. Are non-profit organization businesses eligible?

YES. All qualified businesses must have at least one paid employee and satisfy all the requirements of a “Qualified Business” and a “Small Business Concern” defined in California Code of Regulations (CCR), Title 4, Section 8070 (r) and (v).

3. Is refinancing eligible?

YES AND NO. A lender may use a CalCAP loan to refinance debt held by another non-affiliated lender provided the original loan was for an eligible purpose. A lender may not use a CalCAP loan to refinance one of its existing loans except to the extent that the loan amount is increased [Section 8070(s)(3)]. Thus, a lender may enroll in CalCAP only the increased loan amount of any refinanced preexisting debt held by that lender. For example, a lender previously loaned \$50,000 to a qualified business, but did not enroll the loan with CalCAP. It will now refinance the existing debt and loan an additional \$10,000 to the qualified business. The lender will only be able to submit a CalCAP loan enrollment requesting \$10,000 loss coverage for the \$60,000 loan.

4. Is a loan for the financing of a real estate investment eligible?

NO. Loans for “passive” real estate investments cannot be enrolled in CalCAP [Section 8070(s)]. Defined in Section 8070(m), “Passive Real Estate Ownership” means the ownership of real estate for the purpose of deriving income from speculation, trade or rental.

5. Is a loan for the financing of commercial real estate eligible?

YES. The financing of real estate being used or intended to be used for the operation of the business of the owner of the real estate (the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building); or the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

¹ All regulatory references are to Title 4 of the California Code of Regulations.

Loan Enrollment Questions & Answers

1. When do I enroll a loan in CalCAP?

Loans must be enrolled within 15 business days of the “date of first disbursement” or date of loan. The CalCAP Loan Enrollment Application can be emailed (preferred method) to CalCAP@treasurer.ca.gov or faxed to (916) 589-2805 (be sure to get a fax confirmation) or mailed to CalCAP 915 Capitol Mall, Room 457 Sacramento, CA 95814. Whichever method you chose, it must arrive in our office before the end of the 15th business day.

2. Can I “pre-qualify” a loan enrollment with CalCAP before making the loan?

YES. CalCAP encourages participating lenders to contact CalCAP staff if they are unsure if a borrower or a proposed loan satisfies the enrollment requirements for a “Qualified Business” or a “Qualified Loan” in Section 8070. However, CalCAP lenders are still required to submit the loan enrollment form for final review and approval by the Executive Director of the California Pollution Control Financing Authority or his or her designee.

3. Must I enroll the entire loan amount with CalCAP?

NO. The lender determines how much of its loan to enroll with CalCAP. For example, the lender may loan \$50,000 to the borrower, but it may choose to enroll only \$10,000 of the loan with CalCAP. The premium is only charged on the amount enrolled. In case of a loan default, the lender can only recover any outstanding amount from that portion of the loan that was enrolled with CalCAP. Interest and expenses will be paid in proportion to the enrolled amount.

4. Can I enroll a CalCAP loan with a borrower who is also receiving an SBA loan?

YES AND NO. CalCAP complements SBA programs with its full loan loss protection. For example, a CalCAP lender can make a \$100,000 loan and enroll it with SBA. SBA may protect \$85,000 (85%) of the total loan amount. The CalCAP lender can enroll the uncovered SBA amount of \$15,000 with CalCAP, thereby providing the lender 100% loan loss protection for the loan. **However**, CalCAP cannot use Federal funds for the premium contribution for the unguaranteed portion of an SBA loan. This means CalCAP will contribute other available funds at a slightly lower amount.

5. When do I notify CalCAP if I have extended or renewed a CalCAP enrolled loan?

Notification of extended terms will be indicated on the required quarterly report that the lender submits to CalCAP. If the enrolled portion of the loan amount has increased, then the lender must submit a new loan enrollment form with evidence of the additional borrower and lender loan premium contributions based on the increased CalCAP covered portion of the loan.

Loan Loss Reserve Questions and Answers

1. Where is the loan loss reserve maintained?

Loan loss reserve accounts are held by the CalCAP Trustee, or by a CalCAP lender upon approval of the Executive Director. The loan loss reserve account must be held in a federally insured, demand deposit, interest-bearing account, with no fees [Section 8073(c)].

2. How much of a CalCAP loan premium must I charge the borrower?

The CalCAP lender must charge 1 to 3.5 percent of the enrolled loan amount to the borrower for deposit in the CalCAP loan loss reserve account [Section 8070(d)]. The CalCAP lender determines the loan premium amount to charge the borrower and pays an equal premium.

3. Is there a way for a lender not to pay the CalCAP loan premium?

YES. The borrower can agree to pay both the lender and borrower loan premiums. They must, however, sign the "Borrower Agreement to Pay Lender". This would then be included with the enrollment application when it is submitted to CalCAP.

4. How much does CalCAP contribute to the lender's loss reserve account?

Generally, CalCAP matches the borrower and the lender premium. For example:

ENROLLED LOAN AMOUNT = **\$100,000**
Borrower premium (2%) = \$2,000
Lender premium (2%) = \$2,000
CalCAP contribution (4%) = \$4,000
Total loss reserve contribution = \$8,000

However, if the small business is not eligible to receive Federal fund contributions, other CalCAP funds may be available at a lower matching amount.

ENROLLED LOAN AMOUNT = **\$100,000**
Borrower premium (2%) = 2,000
Lender premium (2%) = 2,000
CalCAP contribution (3%) = 3,000
Total loss reserve contribution = \$ 7,000

Claim Reimbursement Questions & Answers

1. When should I file a claim for reimbursement on a CalCAP loan?

A lender can file a claim by submitting a CalCAP Financial Institution Claim Application within 120 days of charging off all or part of a defaulted loan. The lender may file a claim for reimbursement of a loss before the liquidation of collateral or the realization of personal or other financial guarantees, or recovery of outstanding amounts from other sources [Section 8074(a-d)].

2. Can I defer a claim?

YES. The lender may defer making a claim for up to 180 days from the date of charge off, but must still notify CalCAP in writing within 120 days of the charge off.

3. What if I recover funds after a claim has been paid?

The lender will reimburse the loss reserve account the amount received, less expenses related to recovery. The reimbursement is essentially the amount of money needed to fully recover the lender's loss on the loan, even if a portion of the loan was not enrolled in CalCAP. Recoveries which exceed reimbursements to the loss reserve account may be retained by the lender.

4. What if I don't have enough in my loss reserve account to pay a claim?

If there is not enough money in a lender's loss reserve account to fully cover the loss, the lender can withdraw the amount in the loss reserve account at that time (less the interest accrued). Once the loss reserve account is replenished, the lender can withdraw additional funds to fully cover the earlier claim, as long as that does not exceed 75% of the loss reserve account at that time.